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Supreme Court

Supreme Court denies interim relief to Google against the CCI order

The Supreme Court (“**SC**”) dismissed the appeal filed by Google LLC (“**Google**”), challenging the order passed by the National Company Law Appellate Tribunal (“**NCLAT**”) whereby it refused to grant a stay on the behavioral directions issued by the Competition Commission of India (“**CCI**”) on Google in a case pertaining to android mobile device.

Brief Background

On October 20, 2022, the CCI passed an order (“**CCI Order**”) whereby it found Google to be abusing its dominant position in relation to the android mobile device ecosystem. Accordingly, the CCI imposed a provisional penalty of approximately INR 13,38,00,00,000 (Indian Rupees one thousand three hundred thirty-eight crore) (USD 162.26 million¹) at the rate of 10% on Google’s turnover and issued certain behavioral directions and directed Google to comply within 90 (ninety) days. The directions include mandating Google to change its policy regarding Play Store i.e., not make the licensing of its Play Store to the device manufacturers conditional upon pre-installing certain Apps such as Google Maps, YouTube etc. (referred to as the ‘**Directions**’). For a detailed summary of the CCI Order, refer to the [JSA Newsletter for the month of October 2022](#).

Aggrieved, on December 20, 2022, Google challenged the CCI Order before the NCLAT (“**Appeal**”) and in the interim, sought stay on the penalty and the Directions. While the NCLAT admitted the Appeal subject to deposit of 10% of the penalty amount imposed by the CCI, it refused to grant stay on the Directions (“**NCLAT Order**”).

Aggrieved, Google challenged the NCLAT Order before the SC primarily on the grounds that the: (a) NCLAT failed to decide on the merits of the stay application; and (b) CCI Order suffers from manifest errors.

SC Observations

A three-judge bench comprising of the Chief Justice of India, DY Chandrachud, and Justices PS Narasimha and JB Pardiwala, refused to interfere with the NCLAT Order and inter alia held that: (a) since the Appeal is pending before the NCLAT, the SC will refrain from expressing its opinion on the merits; and (b) the findings of the CCI cannot be held to be without jurisdiction or manifest error at an interlocutory stage. Accordingly, the SC directed the NCLAT to dispose of the Appeal latest by March 31, 2023, and granted 1 (one) week’s time to Google to comply with the Directions.

(Source: Order dated January 19, 2023)

¹ USD 1 = INR 82.46.

Competition Commission of India

Merger Control

CCI approves internal re-organisation of the Kalyani group under Green Channel

The CCI approved the internal reorganisation of the Kalyani group pursuant to a scheme of amalgamation entered among Hibiscus Investment and Finance Private Limited, Rosario Investment Private Limited, Yokoha Investment Private Limited, Peach Blossom Investment Private Limited, Kalyani Cleantech Private Limited, Kalyani Technoweld Private Limited, Kalyani Medicomp Private Limited, Kalyani Strategic Management Services Limited, KSMS Technologies Solutions Private Limited (referred to as the **'Proposed Transaction'**).

The parties notified the Proposed Transaction under the green channel route as there were no horizontal, vertical, or complementary overlaps between the activities of the parties in India.

Miscellaneous

Government proposes additional amendments to the Competition Act, 2002

On February 08, 2023, the Ministry of Corporate Affairs ("**MCA**"), Government of India, proposed certain additional amendments to the Competition (Amendment) Bill 2022 ("**Bill**") which was introduced in the Lower House (Lok Sabha) of the Parliament in August 2022 and was subsequently referred to the Parliamentary Standing Committee on Finance ("**Committee**") to present its report (referred to as the **'Additional Amendments'**). For detailed summary of the Bill, refer to [JSA Competition Law prism of August 2022](#). Following are the key (last minute) additions to the Bill:

Enforcement

- **Computation of penalty:** Under the existing framework, the CCI, while computing penalty takes into consideration the turnover of the contravening enterprise pertaining to the products or services that have been adversely affected by such contravention (i.e., the relevant turnover). By way of the Additional Amendments, the Bill proposes to empower the CCI to take into consideration the "global turnover derived from all the products or services" of the contravening enterprise irrespective of whether the contravention was found with respect to a particular product or service. The said amendment goes against the principles laid down by the SC in the case of *Excel Crop v. CCI*².
- **Competition claims allowed after settlements:** Under the existing framework, an affected party can file a compensation claim before the NCLAT against the contravening enterprise for the damages suffered by such party. The Bill allows an enterprise to offer 'settlements' to the CCI after the investigation report has been submitted by the Director General ("DG"). By way of the Additional Amendments, the Bill clarifies that the aggrieved party can file compensation claims against the contravening enterprise in case of 'settlements' as well.
- **Broadening the scope of hub and spoke arrangements:** Under the existing framework, the cartel agreement between competitors (i.e., engaged in similar trade) is presumed to have an Appreciable Adverse Effect on Competition ("AAEC") in India. The Bill proposes to extend the presumption of AAEC

² (2017) 8 SCC 47.

to hub and spoke arrangements³ implemented by non-competitors i.e., enterprises involved at different levels of the value chain, provided that such enterprises are “actively participating” in such cartel agreement. By way of the Additional Amendments, the Bill proposes to further broaden the scope of hub and scope arrangements by including enterprises who may have not actively participated but even “intended to participate” in such cartel agreement.

- Exclusion of agents by the DG: The Bill proposes to grant power to the DG to examine the agents including legal advisors, bankers, and auditors of an enterprise on oath. However, by way of the Additional Amendments, the Bill has curtailed the powers of the DG to only examine legal advisors employed by the enterprises i.e., in-house counsel and not external legal advisors.

Merger Control

- Clarity on the term ‘substantial business operations’ in relation to the deal value thresholds to apply only to the target: The Bill proposes to introduce an additional “deal value” criterion for assessing whether a transaction (M&A) requires approval from the CCI. As per the said criterion, a transaction will require approval of the CCI if: (a) the deal value exceeds INR 2,000 crore (Indian Rupees two thousand crore) (USD 242.54 million); and (b) where either party has ‘substantial business operations in India’. By way of the Additional Amendments, the Bill clarifies that while assessing the deal value threshold, only the substantial business operations of the target enterprise (and not the acquirer) will be taken into consideration.
- Approval Timelines: The Bill proposes to reduce the statutory timeline for the CCI to form its prima facie view on a merger notification from 30 (thirty) working days to 20 (twenty) calendar days. By way of the Additional Amendments, the Bill proposes to increase the said statutory timeline from 20 (twenty) calendar days to 30 (thirty) calendar days.

Breaking the hiatus, the CCI starts approving the combination cases

On February 9, 2023, breaking the hiatus of 180 (one hundred eighty) days, the CCI has started approving the combination (M&A) cases. Post the retirement of the Chairperson on October 25, 2022, the CCI has only 2 (two) members. Under the Competition Act, 2002 (“**Competition Act**”), all questions which come up before any meeting of the CCI needs to be decided by a majority of the members present and voting, provided that the quorum for such meetings must be 3 (three) members. Because of the lack of quorum, 20 (twenty) combination cases were pending before the CCI for its approval since October 25, 2022.

Basis the media report, the Ministry of Law and Justice had provided its opinion to the MCA that the CCI can invoke the ‘Doctrine of necessity’ to take decisions on the pending combination cases in the absence of a valid quorum. ‘Doctrine of necessity’ is a common law doctrine that suggests that actions which would have otherwise not been permitted, are made lawful by necessity.

On February 9, 2023, the CCI has approved 6 (six) combination cases including: (a) acquisition of certain compulsorily convertible preference shares of Hero Future Energies (“**HFE**”) by KKR; (b) acquisition of the textile effects business of Huntsman International by Archroma Operations S.à.r.l; and (c) acquisition of Lanco Anpara Power Limited by Megha Engineering and Infrastructures Limited Group etc.

JSA represented Hero Future Energies in the *KKR/HFE* transaction before the CCI.

³ Hub-and-spoke arrangements are cartels that are not coordinated through direct exchanges between the horizontal competitors, but through indirect exchanges via a vertically related supplier or retailer.

Government constitutes a committee to examine the need for a separate law on competition in digital markets

The Government has set-up a Committee on Digital Competition Law (“**Committee**”) to examine the need for a separate law on competition in digital markets and further directed the Committee to submit its report within three months.

The Committee will: (a) review whether the existing provisions of the Competition Act, 2002 and the relevant regulations thereof are sufficient to deal with the challenges that have emerged in the digital markets; (b) examine the need for a separate *ex-ante* regulatory mechanism for digital markets through a separate legislation; (c) study the: (i) international best practices on regulation of digital markets (ii) current regulatory regime, government policies, etc. that can be used to promote effective competition in digital markets; (d) practices adopted by other ‘systematically important digital intermediaries’, which can cause harm to competition in digital markets; and (e) analyse any other competition law issues in relation to the digital markets.

The CCI will provide logistic support and research assistance to the Committee. The Committee is headed by the Secretary, MCA. Other members of the Committee include Chairperson, CCI and members from several ministries, law-firms, academicians.

(Source: MCA Notification [dated February 06, 2023](#))

Competition Practice

Since the inception of the Indian competition regime, JSA has been a one-stop shop for all types of competition and anti-trust-related matters with its dedicated competition law practice group. The team’s in-depth understanding of the competition law, coupled with its commercially focused litigation skills has been the cornerstone on which it deals with matters relating to cartelisation (including leniency), abuse of dominance, vertical agreements, and dawn raid before the Competition Commission of India and appellate courts. The team regularly advises clients on general competition law issues arising from day-to-day business strategies and conducts competition compliance training for clients. Given the team’s continued involvement with the regulator, coupled with its balanced and practical approach to competition law, it has been instrumental in shaping the competition law jurisprudence in India.

Over the years, the team has developed a reputation of not only being well regarded by its peers but also for having developed a good working relationship with the regulatory authorities. As such our lawyers have been involved in drafting statutory regulations and have represented the Indian competition law fraternity at various competition law seminars, workshops, and advocacy & public awareness programs across the world. The team’s expertise (including team members) has been widely recognised by various leading international rankings and publications including Chambers and Partners, Who’s Who Legal, Global Competition Review, Benchmark Litigation, Asialaw, and the Legal 500.

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14 Practices and
23 Ranked Lawyers



15 Practices and
18 Ranked Lawyers



**Global Competition Review
(GCR)** has recognized JSA's
Competition Law Practice in its
latest 2023 edition of 'GCR 100



7 Practices and
2 Ranked Lawyers



11 Practices and
39 Ranked Partners
IFLR1000 APAC Rankings 2022

Banking & Finance Team
of the Year

Fintech Team of the Year

Restructuring & Insolvency
Team of the Year



Among Top 7 Best Overall
Law Firms in India and
10 Ranked Practices

13 winning Deals in
IBLJ Deals of the Year

6 A List Lawyers in
IBLJ Top 100 Lawyer List



vahura

Banking & Financial Services
Law Firm of the Year 2022

Dispute Resolution Law
Firm of the Year 2022

Equity Market Deal of the
Year (Premium) 2022

Energy Law Firm of the Year
2021

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The Vahura Best Law Firms to
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